

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

WILLIAM SMITH, 08-B-0527,

Plaintiff,

08-CV-0485(Sr)

v.

ERIE COUNTY HOLDING CENTER, et al.,

Defendants.

DECISION AND ORDER

Plaintiff commenced this action, *pro se*, pursuant to 42 U.S.C. § 1983, alleging that he was denied appropriate medical care for his hearing impairment; denied reasonable accommodations for his disability; and was disciplined for failing to obey an order he could not hear during his incarceration at the Erie County Correctional Facility from November, 2006 through February, 2008. Dkt. #7.

By Notice of Motion filed September 15, 2010, plaintiff moves to compel production of his disciplinary and mental health records from the Erie County Correctional Facility from November, 2006 through February 21, 2008 and records of his visitors, specifically, any member of the New York State Commission of Correction visiting plaintiff while he was housed at the Erie County Holding Center in 2007. Dkt. #33. These discovery demands were served upon defendants on or about June 7, 2010. Dkt. #33, pp.10. In response to the motion, counsel for the defendants declared that the disciplinary records and mental health records had been forwarded to plaintiff

on September 21, 2010, but that the Erie County Attorney's Office had

been unable to locate the 2007 visitor's log. We do acknowledge that a Russell Blair from the New York State Commission [of] Correction was at the Erie County Correctional Facility on September 27, 2007, discussing [plaintiff's] complaint regarding his hearing loss evaluation, and may have met with [plaintiff]. We continue to look for any other records which will confirm this visit, as well as any others in the time frame in question.

Dkt. #37, ¶ 4.

By letter dated November 8, 2010, plaintiff requested the name of the Nurse Administrator at the Erie County Holding Center between November 24, 2006 and February 21, 2008 and a copy of any documents demonstrating that Dr. Blair was at the facility in response to plaintiff's complaints of inadequate medical care. Dkt. #55, pp.9-10. In response, counsel for defendants provided plaintiff with the name of the Nursing Supervisor and attached a copy of a letter, dated April 8, 2008, from the New York Commission of Correction, which referenced Dr. Blair's visit to the Erie County Correctional Facility on September 27, 2007 and his discussion of plaintiff's medical needs with staff at the Erie County Correctional Facility. Dkt. #55, pp.12-15.

By Notice of Motion filed November 23, 2010, plaintiff moves to compel production of "visiting records which were maintained under his name and on file at the Erie County Holding Center and Erie County Correctional Facility for the period beginning November 25, 2006 up to and including February 21, 2008 and which relate to any member of the New York State Commission of Correction Russell Blair R.N.

Ph.D., visiting the plaintiff [when] he was housed at the Erie County Correctional Facility [on] September 27, 2007.” Dkt. #49, ¶ 11. In response to the motion, counsel for the defendants declares that “[a]lthough efforts have continued to locate this log, we have been unable to locate it and believe that it may have been discarded.” Dkt. #55, ¶ 4.

The motion to compel is denied. Defendants have responded to plaintiff’s document demands and have produced all documents except the visitor’s log, which they represent they have searched for but have been unable to locate. The Court notes that the absence of the visitor’s log appears inconsequential given defendants’ production of the April 8, 2008 letter from the Commission of Correction confirming Dr. Blair’s presence at the Erie County Correctional Facility on September 27, 2007 and his discussion of plaintiff’s medical needs with staff at the Erie County Correctional Facility.

SO ORDERED.

DATED: Buffalo, New York
February 10, 2011

s/ H. Kenneth Schroeder, Jr.
H. KENNETH SCHROEDER, JR.
United States Magistrate Judge